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SCOTT AND OTHERS v. PORTER.—Decided at Wytheville, July 4, 1901.—Harrison, J. Absent, Buchanan J:

1. EXECUTORS AND ADMINISTRATORS—*Claims against estate—Ex parte settlements—Burden of proof.* An executor or administrator occupies a position antagonistic to the estate he represents with reference to independent claims preferred by him against the estate, and his *ex parte* settlements, though duly confirmed, are not even *prima facie* evidence in his favor of the correctness of such claim. The burden of proof is on him to establish his demand by proper proof just as if no settlement had ever been made.

2. EXECUTORS AND ADMINISTRATORS—*Claims against the estate—Burden of proof.* An executor who prefers a claim against the estate of his testator for breach of a covenant to do a collateral thing has the burden of proof to establish the due execution of the covenant, the breach by the testator, and the amount he is entitled to recover by reason of such breach.

PULLIAM v. TOMPKINS, RECEIVER.—Decided at Wytheville, July 4, 1901.—Harrison, J:

1. JUDICIAL SALES—*Purchaser—Loss of funds—Commissioner's bond—Acts 1883-4, p. 213.* Under the provisions of the act of February 25, 1884 (Acts 1883-4, p. 213), a purchaser at a judicial sale who has paid his purchase money to one of the special commissioners who made the sale will be protected, although the money was never accounted for by the commissioner, where it appears that the bond directed by the decree of sale was given; that the required certificate was obtained from the clerk, appended to and published with the advertisement; that the land was sold in pursuance of the advertisement, and that no notice of another person having been appointed to collect the purchase money was ever issued or served upon the purchaser.

E. L. LANGFORD AND BRO. v. TAYLOR.—Decided at Wytheville, July 4, 1901.—Cardwell, J:

1. SPECIFIC PERFORMANCE—*Lack of equity—Remedy at law.* Where the answer to a bill for specific performance denies all the grounds of equity set up in the bill, and the averments of the bill are not supported by proof, the bill should be dismissed, and the plaintiff left to his remedy at law.

2. SPECIFIC PERFORMANCE—*Irreparable injury—Averments necessary.* To entitle a complainant to specific performance of a contract, his bill must not only allege an irreparable injury, but must set up a state of circumstances which, if true, shows that the injury would be irreparable.

3. DETINUE—*Insolvent defendant—Injunction—Code, sec. 2907.* The insolvency of a defendant in detinue is no ground for an injunction to prevent the removal or disposition of the subject of litigation. An ample remedy is afforded the plaintiff by section 2907 of the Code.

4. SPECIFIC PERFORMANCE—*Inability to perform decree.* A decree for specific performance will not be granted against a defendant who is unable to perform the decree, even though the inability were brought about by the defendant himself and where the court cannot enforce its judgment.